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GAO

Briefing Report to the Chairman and Ranking Minority Member, Senate Committee on Commerce, Science, and Transportation

November 1985

# CONSUMER PRODUCT SAFETY COMMISSION

# Allegations About The Chairman

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

HUMAN RESOURCES
DIVISION

November 20, 1985

B-221123

The Honorable John C. Danforth,
Chairman, and
The Honorable Ernest F. Hollings,
Ranking Minority Member
Committee on Commerce, Science,
and Transportation
United States Senate

In response to your October 17, 1985, request, we have reviewed certain allegations regarding Terrence M. Scanlon, whose nomination to be Chairman of the Consumer Product Safety Commission (CPSC) is pending before your Committee. We are providing the enclosed briefing report, which contains information we have obtained concerning the allegations.

In discussions with your office, we agreed to focus our work on the allegations made in a September 23, 1985, letter from Ms. Joan Claybrook, President, Public Citizen. The letter supplemented her September 10 testimony before your Committee. Our work, primarily performed at CPSC headquarters in Washington, D.C., and Bethesda, Maryland, mainly consisted of interviews with Commission employees. We also interviewed other individuals who had knowledge of matters discussed in the allegations, and we reviewed documents related to the allegations. Forty-one people were interviewed.

Evidence and documentation we reviewed did not substantiate 12 of the 16 allegations that we reviewed. For two of the other allegations (numbers 10 and 15), we were unable to determine whether they were valid because that would depend, in part, on Mr. Scanlon's intent. In the other two cases (numbers 1 and 14), an employee's refusal to be interviewed has precluded us from making a determination.

Two CPSC employees refused to allow us to interview them because we could not assure confidentiality and job protection. One of these two employees was said by others to have information that was relevant to two allegations. These matters are discussed in more detail in our briefing report, and we have discussed these matters with and provided the names of the employees involved to your office.

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As arranged with your office, unless its contents are announced earlier, we plan no further distribution of this briefing report until 30 days from its issue date. At that time, we will send copies to interested parties and make copies available to others on request.

Should you need additional information on the contents of this document, please call Robert Hughes on 523-8666.

Richard L. Fogel
Director



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## ALLEGATIONS CONCERNING

## TERRENCE M. SCANLON

The Consumer Product Safety Commission (CPSC) is an independent regulatory commission that administers provisions of several laws relating to product safety. CPSC has five Commissioners, one of whom is the Chairman. The Chairman, as CPSC's principal executive officer, is responsible for all executive and administrative functions. In carrying out such functions, the Chairman is to be governed by CPSC's general policies.

Terrence M. Scanlon, who became a CPSC Commissioner in March 1983, became Chairman in January 1985 pursuant to a recess appointment made in late 1984 after the former Chairman resigned. A Commissioner's position has been vacant since January 1985.

During September 10, 1985, hearings held on Mr. Scanlon's nomination to be Chairman by the Senate Committee on Commerce, Science, and Transportation, Ms. Joan Claybrook, President of Public Citizen, made a number of allegations about Mr. Scanlon. In a September 23 letter, Ms. Claybrook provided information to the Committee to supplement her testimony and her comments. Mr. Scanlon, at the Committee's request, responded to Ms. Claybrook's testimony on September 13 and to her letter on October 2.

As agreed with the Committee's office, our review focused on the allegations made in Ms. Claybrook's September 23, 1985, letter. During our review, we interviewed 38 present or former CPSC employees, 2 attorneys that practice before CPSC who were named in Ms. Claybrook's allegations, and an Office of Management and Budget (OMB) official who was said to have knowledge about one allegation. Two CPSC employees refused to be interviewed because we could not assure confidentiality and job protection. We selected the persons to be interviewed based on names that were provided by Ms. Claybrook or suggested by other persons we interviewed.

Except for two persons we interviewed by telephone--an attorney in New York City and a former employee who was said to be moving from the area shortly--the people we interviewed provided their information under oath. During our interviews with present and former CPSC employees, we generally questioned them regarding all the allegations in Ms. Claybrook's letter.

We also reviewed Mr. Scanlon's two responses to Ms. Claybrook's allegations and material provided to us by people that we interviewed.



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The allegations and our findings regarding them are presented below.

1. **Allegation:**

Mr. Scanlon has, both at the Department of Commerce, where he was formerly employed, and at CPSC, used government staff, equipment, and facilities to perform work for the "right-to-life" movement and for his personal business transactions, including real estate property he owns and leases.

GAO Findings:

We did not attempt to verify the allegations as they related to Mr. Scanlon's employment at the Department of Commerce because of the short time we had to complete our review and the long time that had elapsed since he was employed at the Department.

Mr. Scanlon told us that he has never used government staff, equipment, or facilities to perform work for the "right-to-life" movement or for his outside business interests while at CPSC. He said that occasionally, if he cannot get out of the office, he asks someone to go to the bank for him (for example, to cash a check so he has money for taxi fares).

Mr. Scanlon told us that he had accepted reimbursement from a secretary who he had asked to perform a task unrelated to government business. He said he had asked the secretary to do some banking transactions, including making a mortgage payment while he was on vacation. The payment was made late and a penalty was imposed. Mr. Scanlon said when he mentioned this to the secretary during an attempt to determine if another transaction--a deposit--had been made, she insisted on reimbursing him for the penalty. He said that, over his vigorous objections, she gave him a check, which he reluctantly accepted because she was so upset. He believed the amount involved was under $100.

Four of the six employees who work in the Chairman's office said they had not performed, nor had they any knowledge of anyone else performing, the types of activities alleged.

One employee said that she had not performed any activities related to "right-to-life," nor to her knowledge, had anybody else. She said that on occasion she had typed information, such as names and addresses, on lease forms for Mr. Scanlon. She said that she had done so about two or three times since she had worked for him (about 10 months) and it would take about 5 minutes to type the information on a lease. She also said she



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had (1) occasionally carried envelopes to Mr. Scanlon's friends during her lunch hour and (2) cashed travel checks for him, often during a morning break or lunchtime, if he was caught in meetings, on his way to speeches, or getting ready for a trip. She said that she was not aware of anyone else performing similar activities.

One of the six employees refused to be interviewed because we could not guarantee protection against any action that might result from her providing us information. Several employees we interviewed who do not work in the Chairman's office said that this employee (a secretary) had told them that she had performed work on "right-to-life" and outside business activities for Mr. Scanlon, and some of them said that she told them that she had records, such as copies, relating to that work. They generally had no direct knowledge of any such work and did not know the extent of work she may have performed. One employee told us that she observed this secretary typing several letters on the letterhead of a private school. She said the secretary told her that this was being done for Mr. Scanlon.

During our attempts to interview this secretary, she implied that she had records but refused to show them to us. Without information from this secretary, who is the same employee who reimbursed Mr. Scanlon for the penalty, we cannot determine whether "right-to-life" work was performed or the extent to which work on personal business was performed for Mr. Scanlon at CPSC.

2. **Allegation:**

Mr. Scanlon's involvement in "right-to-life" outside activities may (1) create a real or apparent conflict of interest and (2) violate a provision of law which prohibits a Commissioner from engaging in another business, vocation, or employment.

GAO Findings:

Our investigation did not reveal any instances in which Mr. Scanlon's membership in various "right-to-life" organizations created a real or apparent conflict of interest. Mr. Scanlon told us that he spent very little time on "right-to-life" activities--he estimated about 20 hours--since coming to CPSC. Ms. Claybrook provided no evidence to indicate that Mr. Scanlon spent a significant amount of time on "right-to-life," and the CPSC employees we interviewed generally did not know how Mr. Scanlon spent his time outside the office. The amount of time Mr. Scanlon said he spends on "right-to-life" activities is not sufficient, in our view, to constitute a business, vocation, or employment.



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3. **Allegation:**

The CPSC Commissioners decided by vote to limit the scope of a survey to all-terrain vehicles (ATVs) rather than to include snowmobiles and dirt bikes. Mr. Scanlon moved to circumvent this decision by instructing his Executive Director to contact OMB, which clears such surveys, to undermine the Commissioners' decision.

GAO Findings:

We found no evidence to substantiate this allegation. Mr. Scanlon said that he did not ask the Executive Director to contact OMB. The Executive Director said he had contacted OMB at the request of a Commissioner (not Mr. Scanlon) before the vote to get an idea of OMB's reaction to the survey. The Executive Director said he contacted OMB after the Commissioners voted only to discuss an ATV hearing and other events in California that the OMB official attended. That official told us that he had frequent contacts with the Executive Director both before and after the Commission voted. He said at no time did the Executive Director attempt to undermine the Commission decision.

One CPSC employee who is CPSC's contact with OMB refused to be interviewed.

4. **Allegation:**

Significantly in advance of an ATV hearing in New Hampshire, Mr. Scanlon arranged for a private meeting with ATV industry representatives to be set up for the following day. Although at least one other Commissioner and staff were at the public hearing, the meeting was not listed on CPSC's public calendar and none of them were told of the meeting. At the last minute, Mr. Scanlon apparently realized the risk he was taking and, instead of attending, had the Executive Director run the meeting.

GAO Findings:

With the exception of not notifying the Commissioner and staff, these allegations are unsubstantiated. During our interviews, we did not get consistent stories of the events leading up to the private meeting on July 26, 1985. It appears, however, that it was arranged only shortly before the July 25, 1985, New Hampshire public hearing. The official who chairs the ATV task force said he arranged the meeting. He told us that Mr. Scanlon wanted to have the meeting in Washington the week after the public hearing. The official said that he suggested



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that it be in New Hampshire since it would be more convenient for the industry representatives who would be there. He said that he spent time on the phone about 2 or 3 days before the public hearing trying to coordinate the meeting with the industry representatives. He also said that apparently Mr. Scanlon had decided not to attend at least 2 days before the meeting based on a note that this official had in his files to prepare a public calendar notice on July 24, 1985, for the Executive Director to meet with the industry representatives on July 26, 1985. The official, who did not attend the meeting, said that on July 24, 1985, he (1) prepared a public calendar notice (which was published on July 31, 1985), (2) had the meeting posted on CPSC's master calendar, and (3) requested a waiver of the 7-day advance notice requirement.

Mr. Stuart Statler, the only Commissioner other than Mr. Scanlon who attended the public hearing, said he was not told about the meeting by any of the CPSC attendees. The Executive Director said he did not know if Mr. Statler was aware of the meeting.

5. **Allegation:**

On September 11, 1985, Mr. Aaron Locker, Counsel for the Toy Manufacturers of America and the Juvenile Products Manufacturers Association and a trusted confidante to Mr. Scanlon, met with Mr. Scanlon in his office. The meeting was never listed on the public calendar, nor was a written log filed on the meeting.

GAO Findings:

We found no evidence to substantiate the allegations. In his October 2, 1985, response, Mr. Scanlon said that Mr. Locker is not a confidante of his. He said he saw Mr. Locker only for a matter of seconds in a public hallway on September 11, 1985, and has not met with Mr. Locker since he became Chairman. Mr. Locker confirmed the hallway encounter, told us that he did not remember having any meetings with Mr. Scanlon after Mr. Scanlon became Chairman, and said he had no recollection of ever being in Mr. Scanlon's office area during 1985. Mr. Locker said that his relationship with Mr. Scanlon was purely professional and that he did not consider himself a friend or confidante. None of the people interviewed said they had seen Mr. Locker and Mr. Scanlon meet since Mr. Scanlon became Chairman.



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6. **Allegation:**

Two weeks after the CPSC enforcement staff wrote a letter to the manufacturers of V-shaped baby gates urging them to cease production of this design, Mr. Scanlon criticized the Chief of Enforcement during a closed Commission meeting and wrote a memorandum criticizing the Chief for exceeding his authority. Two days later, Mr. Locker wrote the Chief complaining about what he claimed amounted to a ban by one agency official mimicking Mr. Scanlon's presumably private complaint. In addition, the entire industry quickly learned of Mr. Scanlon's complaint and backpedaled on their promise to cease production.

GAO Findings:

While the specific improprieties involved in the allegation are unclear, they appear to be (1) criticizing the Chief of Enforcement and (2) disclosing what happened at a closed meeting.

We found no evidence of improprieties. Mr. Scanlon was not the only Commissioner (he was not Chairman at the time) to question the propriety of the letter. We found no evidence that he disclosed what happened at the meeting. Mr. Scanlon said he did not pass on any information about the meeting to Mr. Locker or anyone else.

Mr. Locker told us that he had not received any information from, or had any contacts with, Mr. Scanlon or anyone else in Mr. Scanlon's office in connection with baby gates. He said he learned that the letter was a staff request rather than a Commission request during a meeting with the enforcement staff on November 19, 1984, 9 days before he wrote his letter.

Our review of the official summary of the meeting, at which other industry representatives were also present, showed that Mr. Locker had asked if the Commissioners were informed of the meeting. He was told by the Chief of Enforcement that they were informed and that the actions sought (stopping production and distribution of the gates) were a staff position and recommendation and not a Commission position.

7. **Allegation:**

Following a routine congressional inquiry, Mr. Scanlon arranged from his vacation home to unilaterally amend a consent agreement with Emerson Electric, an act that is not permitted by the statute. He directed the Executive Director to order the enforcement staff to send Emerson a



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letter relieving it of certain compliance aspects of the agreement. His orders were carried out without notice even to the other Commissioners.

GAO Findings:

While Mr. Scanlon initiated action to get the Emerson matter resolved expeditiously, we found no evidence that he directed how the matter be resolved or that the relief granted Emerson was inappropriate.

Mr. Scanlon advised us that he told the Executive Director only to find out why the matter was not resolved after he noted a status inquiry on a weekly congressional report. He said a similar inquiry had been made about 2 months before. The Executive Director told us that he called the enforcement staff to get the matter moving. The enforcement official that the Executive Director contacted confirmed that the request was limited to expediting the matter.

The Chief of Enforcement told us that he had previously considered modifying the agreement but modification would involve time-consuming procedural requirements. Had he taken that approach, he would have gone to the Commission. Instead, to expedite resolution, he wrote Emerson's attorney that his office would not recommend enforcement action if Emerson did not comply with the provision involved.

The provision of the agreement involved was included at the request of Emerson and was not a subject of CPSC concern. The issue for the CPSC staff was how, rather than whether, to relieve Emerson from that provision. One Commissioner told us that he learned of the Emerson letter only when these allegations were made and that he intends to look into the matter further.

8. **Allegation:**

A letter from Mr. Robert Sussman, who represents Essex Company, makes knowing references to matters contained in a restricted briefing package that was not to be disseminated outside CPSC. Mr. Scanlon and his personal staff have held at least one unlogged meeting with Mr. Sussman. In a memorandum, Mr. Scanlon used arguments to the CPSC staff that tracked closely those of the Essex counsel. There is an unavoidable presumption that Mr. Scanlon or his staff inappropriately shared briefing materials and restricted Commission deliberations with Mr. Sussman.



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GAO Findings:

The allegations are unsubstantiated. Mr. Scanlon has stated that neither he nor, to his knowledge, his staff have had any meetings or shared restricted briefing packages with Mr. Sussman. None of the CPSC employees we interviewed said that they had seen Mr. Sussman meet with Mr. Scanlon or any of his staff.

Mr. Sussman told us that he has had no meetings with Mr. Scanlon or his staff on the Essex case, nor has he received or seen a briefing package on the case. Mr. Sussman said that he has met with Mr. Scanlon twice--once before Mr. Scanlon was Chairman (the allegations involve a period after Mr. Scanlon was Chairman) and once when Mr. Sussman made a presentation at a formal briefing. Mr. Sussman said he had two telephone contacts with one of Mr. Scanlon's staff members on the Essex case. Based on his description of the contacts, they seemed appropriate.

Mr. Sussman said that the information he received from CPSC about the Essex case came from routine contacts with the compliance staff while discussing possible settlement of the matter. He said such contacts provided insight but not a complete picture of what was in the briefing package.

9. **Allegation:**

Mr. Scanlon has consistently referred to the furniture industry program to reduce upholstered furniture fires as successful and has attempted to reduce or eliminate CPSC resources to deal with upholstered furniture fires. CPSC's Executive Director delayed a staff report and Commission briefing on the problem and insisted that the report (1) conclude that the industry is doing all that it can and (2) make no strong recommendations for further industry action.

GAO Findings:

We found no evidence of improper conduct. Mr. Scanlon's views on the level of resources that CPSC should devote to reducing upholstered furniture fires is a policy issue. The Commission decides the level of funding for the program. The Program Manager, Fire and Thermal Burn Hazards, told us that the Executive Director did not insist on changes to the staff report. He said the report, including its recommendations, was developed by the staff and the staff stands behind it.



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10. **Allegation:**

The Commission voted to have its Chronic Hazard Advisory Panel review the carcinogenicity of a chemical in all consumer products. The next day, Mr. Scanlon wrote a letter to the panel members instructing them to review only children's products--a scope favored by him and industry but repudiated by other Commissioners. When the misdirections were discovered, the other Commissioners insisted that a new letter be sent.

GAO Findings:

The allegation implies that the words limiting the panel's scope to children's products were intentional. We could not determine if that is correct. Mr. Scanlon told us that he thought his initial letter represented the Commission's consensus on the scope of the panel review, and he did not intend to mislead the panel. When the fact that his letter had limited the panel's scope to children's products was brought to his attention, he immediately wrote another letter. The corrected letter was distributed the next day.

11. **Allegation:**

Mr. Scanlon authorized expenditures for two pilot studies in hospital emergency rooms on whether consumer behavior was involved in injuries although other Commissioners were opposed to such studies.

GAO Findings:

We believe that this is a policy issue. The Commission had not prohibited such pilot studies at the time, and the Commissioners' approval was not required for the amount of funds involved, reportedly $1,500 for each study.

12. **Allegation:**

The allegation describes a disagreement between Chairman Scanlon and Commissioner Statler on injury and safety data, with each accusing the other of using inaccurate or misleading data.

GAO Findings:

This allegation involves a difference of opinion between Messrs. Scanlon and Statler on which data are more appropriate. Both of them believe they have properly used data. We did not make a judgment on which data are more appropriate.



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13. **Allegation:**

Mr. Scanlon's September 10, 1985, testimony before the Senate Commerce, Science, and Transportation Committee that product hazard reports from industry had increased during 1985 was misleading because he did not reveal that CPSC guidelines adopted 18 months prior to his testimony had doubled the voluntary reporting of hazards.

GAO Findings:

We see no significance to the allegation, which implies that Mr. Scanlon should not take credit for increased reporting that resulted from an action that took place before he became Chairman. In any case, Mr. Scanlon voted for the guidelines that are alleged to have resulted in increased product hazard reports.

14. **Allegation:**

Mr. Scanlon has been associated with scurrilous activities to scuttle the nomination for CPSC Chair of Ms. Camille Haney. He is known to have helped prepare a non-byline article for Human Events which condemns Ms. Haney by association and attempts to embarrass Senator Bob Kasten for recommending her.

GAO Findings:

We found no conclusive evidence on these allegations. Mr. Scanlon told us that he had not prepared or provided anything to the media relating to Ms. Haney. Mr. Scanlon's staff indicated that they knew nothing of any actions by Mr. Scanlon to criticize Ms. Haney.

One person we interviewed said that an employee from Mr. Scanlon's office had showed her an article about Ms. Haney which she indicated was prepared by Mr. Scanlon's office. She said the article appeared 2 or 3 days later in the Washington Times or Human Events. We were unable to interview the person who showed her the article because she refused to be interviewed. (See Allegation 1.)

One employee in Mr. Scanlon's office told us that she delivered an envelope to the Washington Times on March 11, 1985. She said that, when she submitted her taxi voucher for the trip, Mr. Scanlon instructed her to change the destination so that it would not show the Washington Times. She said she did not know the contents of the envelope or remember the addressee's name. One week later an editorial critical of



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Ms. Haney entitled "Kasten Zany for Haney" appeared in the Washington Times.

Mr. Scanlon told us that the material delivered to the Washington Times was a draft article on poison prevention that he hoped to have published during Poison Prevention Week. He gave us a copy of the draft article and a similar article that had been published in the Washington Times on March 19, 1984. He said the article submitted this year was not published.

He told us that he had the voucher altered so CPSC employees would not see that he was sending material to the Washington Times. He believed if other CPSC officials knew he was sending material to the newspaper, they might try to do so also and he could lose press coverage. He would not give us the name of the reporter to whom the article was sent but said he would give the name to the Committee.

15. **Allegation:**

Mr. Bert Simson, a Senior Executive Service employee who was the Deputy Executive Director of CPSC, was detailed to another CPSC position in disregard of the intent of a law that prohibits the involuntary reassignment of a career appointee within 120 days after the appointment of the head of an agency. The purpose of the prohibition was to give the career appointee an opportunity to demonstrate his expertise to the new management. Also, Mr. Scanlon told several people that he wanted to "dump" Mr. Simson around the time he became Chairman.

GAO Findings:

The detailing of Mr. Simson to another position about a month after Mr. Scanlon became Chairman did not give him the opportunity to demonstrate his ability to perform as Deputy Executive Director. At Mr. Simson's request, the personnel action was reviewed by the Special Counsel of the U.S. Merit Systems Protection Board. Based on the legal distinction between a detail and a reassignment, the Special Counsel determined that there was no evidence of a prohibited personnel practice or activity. Our office has no legal basis for concluding otherwise.

Three of the people we interviewed said that Mr. Scanlon had said or indicated, around the time that he became Chairman, that he did not want to keep Mr. Simson in the Deputy Executive Director position. Several other people said that management improvements were needed in the organization to which Mr. Simson was detailed and that Mr. Simson had strong management skills.



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Mr. Scanlon told us that Mr. Simson was detailed because his management skills were needed to take care of problems in the unit to which he was detailed rather than to get him out of the Executive Director's office. He said he had made no comments about moving Mr. Simson from the Deputy Executive Director position once he became Chairman.

16. **Allegation:**

Mr. Scanlon required CPSC personnel to work overtime but refused to pay them for it.

GAO Findings:

We did not identify anyone who worked overtime for Mr. Scanlon without pay other than the individual discussed in Mr. Scanlon's October 2, 1985, response. Mr. Scanlon told us that when he hired that individual, she was aware that she would be working more than a 40-hour workweek. After working for him for many months, she claimed overtime on her timecard. He did not think she was entitled to overtime because she was a Schedule C employee.[1] After learning from the personnel office that she was entitled to overtime, she was paid when she worked any overtime. This occurred before Mr. Scanlon became Chairman.

We were unable to get the views of the individual involved because, as discussed in Allegation 1, she refused to be interviewed.

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[1]Schedule C employees serve in policymaking positions or positions requiring a close confidential relationship with an agency head.

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